

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

LORI SIMPSON and JOHN SIMPSON,)	
)	
Plaintiffs,)	
)	
vs.)	CASE NO.: 1:12-CV-177-APR
)	
HOOK-SUPERX, L.L.C. d/b/a CVS and)	
CVS PHARMACY, INC.,)	
)	
Defendants.)	

**JOINT MOTION TO DISMISS THE CLAIMS
OF LORI SIMPSON WITHOUT PREJUDICE**

The Plaintiffs, Lori Simpson and John Simpson (collectively referred to as “the Simpsons”) and the Defendants, Hook-SuperX, L.L.C. d/b/a CVS and CVS Pharmacy, Inc. (collectively referred to as “CVS”), by counsel, respectfully move the Court to dismiss the claims of Lori Simpson without prejudice and allow the current stay to remain in place as to John Simpson’s claim. In support of this motion, the parties state the following:

1. In order for the United States Court of Federal Claims, Office of Special Masters, to have subject matter jurisdiction over Lori Simpson’s claim for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa *et seq.* (“Vaccine Act”), she may not have a pending civil action for a vaccine-related injury at the time her petition is filed with the Court of Federal Claims.

2. A pending civil action for a vaccine-related injury includes those in which the

proceedings are stayed for purposes of the Vaccine Act. See Hamilton V. Sec'y of HHS, 28 Fed. Cl. 315, 318 (1993), Cook v. Sec'y of HHS, No. 03-2355V, 2012 WL 664766 (Fed. Cl. Sp. Mstr. Feb. 18, 2012), and Zavala v. Sec'y of HHS, No. 03-1337V, 2006 WL 5616331 (Fed. Cl. Sp. Mstr. Jan. 18, 2006).

3. However, pursuant to the Vaccine Act, John Simpson may not bring a claim for compensation for loss of consortium or loss of services of his wife, Lori Simpson, in the United States Court of Federal Claims, Office of Special Masters, but he may do so in a separate civil lawsuit.

4. In order to preserve John Simpson's right to pursue his loss of consortium claim, if necessary, following the special master's decision on entitlement and damages in *Lori Simpson v. Secretary of Health and Human Services* and to avoid the possible running of the two-year statute of limitations on his claim, the parties request that his claim remain stayed.

5. The Simpsons, by counsel, will move the Court to either lift the stay or dismiss the action with prejudice after the special master's decision becomes final in *Lori Simpson v. Secretary of Health and Human Services*.

WHEREFORE, the Simpsons and CVS, jointly, by counsel, respectfully request that the Court dismiss the claims of Lori Simpson without prejudice and stay the claim of John Simpson in this matter pending resolution of Lori Simpson's claim in the United States Court of Federal Claims, Office of Special Masters, requesting compensation under the National Vaccine Injury Compensation Program.

Respectfully submitted,

THEISEN BOWERS & ASSOCIATES, LLC

s/ John C. Theisen

John C. Theisen, #549-02
Marie M. Kolp, #26863-02
Nathaniel O. Hubley, #28609-64
810 South Calhoun Street, Suite 200
Fort Wayne, IN 46802
Telephone: (260) 422-4255
Facsimile: (260) 422-4245
Attorneys for Plaintiffs

BARRETT & McNAGNY, LLP

s/ Kevin K. Fitzharris

Kevin K. Fitzharris, Esq.
Barrett & McNagny, LLP
215 East Berry Street
Fort Wayne, Indiana 46802
Telephone: (260) 423-9551
Facsimile: (260) 423-8920
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby swears and affirms that a true and correct copy of the above was filed by John C. Theisen using the Court's CM/ECF this 4th day of December 2012, which will send electronic notification to:

Kevin K. Fitzharris, Esq.
Barrett & McNagny, LLP
kkf@barrettlaw.com

s/ John C. Theisen

John C. Theisen